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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 August 1993, at 10 a.m.

Chairman: Mr. AL-KHASAWNEH
later: Mr. YIMER

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Discrimination against indigenous peoples

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GE.93-14640 (E)

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The meeting was called to order at 10.15 a.m.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 14)

Statement by Mrs. Rigoberta Menchú, Nobel Peace Prize Laureate, 1992

1. Mrs. RIGOBERTA MENCHU, 1992 Nobel Peace Prize Laureate, welcomed the opportunity of addressing the Sub-Commission which had made such a vital contribution to the cause of human rights throughout the world and had been the creative force behind so many international instruments; the technical studies prepared by the Sub-Commission would continue to play an essential role in the future in the struggle for the inherent rights of the individual.

2. She expressed her deep concern at, and condemnation of, the grave violations of human rights which continued to be perpetrated in many parts of the world. The international community, and the Sub-Commission in particular, must not forget that more than 50 armed conflicts were taking place throughout the world and the victims included many from among the world's indigenous people. A challenge for the present generation, at the end of the twentieth century, must be to end war as a means of political coercion. Internal conflicts within countries must be ended, as also must be the injustice and oppression which caused them.

3. Turning to the situation in former Yugoslavia, the international community, pursuant to the provisions of a number of international instruments, must make an effective contribution to ending the war and establishing a climate of peace and solidarity between the different peoples. It was not admissible that the conflict should continue for lack of a formula for its solution.

4. In a few days, the Sub-Commission would take up items which were of deep concern to her and the reason for her international work. In particular, agenda item 14 was an issue which had hardly even begun to receive the attention which it merited.

5. The Sub-Commission would also consider the issue of the environment and human rights. In her report (E/CN.4/Sub.2/1993/7), Mrs. Ksentini had interpreted the sentiment of indigenous people on the environment and, in particular, on their own continuing relationship with Mother Earth. There was an indigenous saying that the earth did not belong to people but that present and future generations of people belonged to the Earth. She congratulated Mrs. Ksentini on the excellence of her work and appealed to the international community to listen to and try to understand the thinking and philosophy of indigenous people concerning the Earth. It contained a message of respect for nature, humans, animals and plants.

6. She congratulated Mr. Alfonso Martínez on his progress report (E/CN.4/Sub.2/1992/32) on the significance of treaties, agreements and other constructive arrangements between indigenous peoples and States and offered the support of those peoples for the work that still lay ahead of him. Many indigenous peoples had signed documents which had not been respected. Some had done so to cede territory or to avoid extermination. It should be stressed that indigenous peoples honoured their word, in accordance with the

principle of what jurists called pacta sunt servanda. She knew of no treaty which had been violated by an indigenous people but equally she knew of no treaty which had been respected by the other signatory party. In her view such instruments were valid and remained in force because they had been signed by representatives of sovereign peoples and currently could serve as the base for the building of a new alliance which was the theme of the International Year for the World's Indigenous Peoples.

7. Under the chairmanship of Mr. Eide, the Working Group on Indigenous Populations had started work in 1982 on the preparation of an instrument which would safeguard the participation of indigenous peoples. Subsequently the chairmanship had passed to Mrs. Erica Irene Daes and it was not possible to find words which would adequately thank her for her work, dedication and infinite patience.

8. The Working Group had prepared the general outline of a draft declaration containing the essential elements of the rights and claims of the indigenous peoples. She had two concerns however; the first related to the content and the second to indigenous participation in the process which would commence when the Sub-Commission decided to submit the draft to higher bodies.

9. On the issue of substance, the declaration must be set within the framework of General Assembly resolution 41/120 and must therefore be a faithful reflection of the Working Group's discussions; it must respond to the claims formulated by the representatives of indigenous people and must guarantee all the rights which international law stipulated for all peoples and individuals; that had always been made clear in the Working Group.

10. The indigenous peoples were confident that the United Nations General Assembly, in adopting the draft universal declaration on indigenous rights, would understand and support the concept of self-determination as a condition for their physical and cultural existence and their right to their ancestral lands; those elements were the fundamental basis for the maintenance, recreation, projection and onward transmission of their cultural and spiritual values. Without those two elements, the draft would lose much of its validity and effectiveness for indigenous people.

11. A further concern related to the participation of representatives of indigenous peoples and organizations, both those in consultative status and those lacking such status, in the discussions of the Commission on Human Rights, the Economic and Social Council and the General Assembly. The concern was that the draft declaration might be voided of its substance and intent as it progressed to organs senior to the Sub-Commission. It was of crucial importance that the Sub-Commission should consider that aspect and make a specific recommendation to those organs concerning ways and means of participation. The indigenous peoples appealed to Governments as well as to intergovernmental and non-governmental organizations to support them in that task. The presence and active participation of the indigenous peoples must be guaranteed in all processes and bodies in which the draft declaration was discussed.

12. There was a huge contrast in the rights of indigenous peoples; while substantial advances could be seen in the legal and philosophical debate at the international level, nevertheless the situation in many parts of the world had deteriorated while discriminatory and marginalization practices continued unchanged. Advances included: the study by Mr. Martínez Cobo (E/CN.4/Sub.2/1986/7 and Add.1-4); the creation of the Working Group on Indigenous Populations; the revision of the ILO Convention on Indigenous and Tribal Populations (No. 107) currently No. 169; the creation of the United Nations Voluntary Fund for Indigenous Populations; the studies on treaties and intellectual property being prepared by Mr. Alfonso Martínez and Mrs. Daes; the declaration of the International Year for the World's Indigenous People; the draft universal declaration on indigenous rights currently under preparation; and the recommendation made at the World Conference on Human Rights that a decade for the indigenous peoples should be declared. Progress had also been made in some American countries, such as constitutional revisions and new legislation which took account of the fundamental rights of indigenous peoples. That very day a new President of Bolivia had been inaugurated along with, for the first time in the Americas, a Vice-President who was an indigenous brother. The process must continue.

13. The International Year for the World's Indigenous Peoples had given those peoples the opportunity to reaffirm their right to diversity and to be different. The achievements of the International Year were not however sufficient. States had never attached sufficient importance and attention to indigenous people. In some cases the International Year had been wasted in purely symbolic activities. It was her deep belief that one single year was not enough to resolve the historic problems between peoples and States and the indigenous peoples therefore intended to strive for an international decade which would be a continuation of the International Year. An international decade would offer an official framework for the continuation of efforts for coexistence between indigenous and non-indigenous peoples. Such a decade would make it possible to strengthen unity further while mutually accepting differences and opinions. It should be regarded as an opportunity to create new relations of coexistence between States and indigenous peoples. That would only be possible if the initiatives of the indigenous peoples themselves were supported.

14. She had had the privilege of being United Nations Goodwill Ambassador during the International Year and, as such, had pursued two goals: first, to achieve recognition of indigenous peoples as a new group in the international community and, second, assistance in the delicate task of establishing with Governments relations based on mutual confidence, reliable information and an understanding of the problems and interests of the indigenous peoples. It had not been easy to fulfil that role because of the limitations of the United Nations itself, but it had been possible to lay the groundwork for very important future relationships.

15. Notwithstanding the advances at the international level and in a number of countries, situations of discrimination had continued or worsened in many countries, since ethnocide and even genocide continued to be a regular practice. Discrimination was still the daily experience of many indigenous people; the theft of land and territory persisted. General repression and the militarization of indigenous lands was a reality. So-called development

projects had a direct impact on indigenous peoples but did benefit them. Lack of respect for the cultural characteristics of many peoples was a constant factor. An arduous task lay ahead if the necessary conditions for a relationship of mutual confidence between Governments and peoples were to be created.

16. In her capacity as United Nations Goodwill Ambassador during the International Year for the World's Indigenous Peoples she would like to pay tribute to the Working Group on Indigenous Peoples which had established itself as the most important forum in which indigenous peoples, non-governmental organizations, experts and Governments could meet. She wished to convey the feelings of many of her colleagues from indigenous communities in expressing resolute support for the continuation of the Working Group so that it could complete the tasks which it had set for itself as well as new ones. She would also like to express satisfaction at the progress represented by the preparation of the draft declaration on the rights of indigenous peoples and in that connection wished to pay tribute to the Working Group and, in particular, to the important role played by Mrs. Daes. The draft declaration already represented an historic event in the life of those peoples. The indigenous peoples thought that the Sub-Commission should give its opinion on the declaration that year because it was an urgent necessity for them.

17. Many indigenous peoples continued to be subjected to unacceptable conditions. The indigenous populations of her own country, Guatemala, were a case in point. Serious violations of human rights continued in Guatemala, particularly in the rural and indigenous sectors. As a member of the Mayan people, she urged the Sub-Commission to approve a resolution on the situation of human rights in Guatemala which would reflect the principal recommendations of the report of the independent expert, Mr. Tomuschat. It was to be hoped that, through a suitable resolution, the Government of Guatemala might be requested to effect substantial improvement in the human rights situation in that country, including the right to peace. A strong message to the forces of repression in the country was needed, operating as they did in a climate of impunity.

18. The CHAIRMAN thanked Mrs. Rigoberta Menchú for her inspiring address.

19. Mrs. DAES said that she wished to express her deep gratitude to Mrs. Rigoberta Menchú for her active and constructive participation in the work of the Working Group on Indigenous Populations. Her contributions to all the items of the Working Group's agenda during its latest session had been very valuable.

20. She appealed once more to the Assistant-Secretary-General for Human Rights and to the Secretary-General, to define Mrs. Rigoberta Menchú's substantive mandate and important role as United Nations Goodwill Ambassador for indigenous peoples as soon as possible. She strongly believed that Mrs. Rigoberta Menchú's role should be strengthened so that she could continue her noble mission as defender of the human rights of the world's indigenous peoples.

21. Mr. ALFONSO MARTINEZ endorsed the views expressed by Mrs. Daes.

22. He wished to stress that it was of prime importance that the representatives of indigenous peoples should participate fully in the preparatory work on the draft universal declaration on indigenous rights with a view to ensuring its adoption by the General Assembly.

23. Mr. EIDE, Mrs. KSENTINI, Mr. JOINET and Mr. GUISSE strongly endorsed the comments of Mrs. Daes and, in particular, her emphasis on the need for the mandate of Mrs. Rigoberta Menchú as United Nations Goodwill Ambassador for indigenous peoples to be enhanced.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued)
(E/CN.4/Sub.2/1993/12-14; E/CN.4/Sub.2/1993/37; E/CN.4/Sub.2/1993/NGO/3; E/CN.4/Sub.2/1993/NGO/5; E/CN.4/Sub.2/1993/NGO/18)

24. Mr. HELLER drew attention to a situation which in his opinion deserved the Sub-Commission's consideration. All members would have presumably learnt from the press of the attacks made in recent months on distinguished Algerian intellectuals as a result of intolerance. The attacks had been selective, designed to eliminate supporters of a pluralistic society. In view of their extent, the Sub-Commission might wish to send the following message of solidarity with Algerian intellectuals, which had been prepared by some of its members:

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

- Deeply concerned with acts of assassination directed against intellectuals as such and motivated by fanatical obscurantism;

- Deeply shocked by the persecution and assassination, by extremist groups, of Algerian writers, journalists, academics, doctors and trade unionists;

- Expresses its solidarity with the victims and their relatives;

- Supports the action of Algerian civil associations which, in response to those acts, courageously seek to preserve and defend the ideals of tolerance and mutual understanding inherent in a pluralistic society."

25. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission wished to send the message.

26. It was so decided.

27. Mrs. KSENTINI thanked the Sub-Commission for the initiative which it had just taken in favour of the victims of unreasoning terrorism fed by extremism, fanaticism and intolerance. The Sub-Commission's gesture constituted an act of faith in the noble ideals of a pluralist and tolerant society for which the

Algerian people had fought and to which it remained deeply attached. The Sub-Commission's condemnation of terrorist acts resulting from fanatical obscurantism would encourage all those Algerians who firmly believed in democratic values and were working to safeguard a pluralist society based on progress, tolerance, cooperation and the rule of law.

28. Mr. Yimer took the Chair.

29. Ms. SABHARWAL (Observer for India) said that any assessment as to whether human rights were being upheld had to be holistic. At a time when democracy and human rights were universally accepted aspirations and imperatives, the Sub-Commission had to identify the hurdles that should be removed, the pitfalls that should be avoided, and the conditions that should be created in the common quest to secure human dignity and well-being. Her delegation therefore believed that, whatever individual countries did, alone or in the context of the United Nations, their purpose should be to promote cooperation in implementing the universal norms of human rights in an increasingly interdependent world.

30. India's commitment to the promotion and protection of human rights was total. A representative democracy based on universal adult suffrage, a multiparty system, and free and fair regular elections could be the only basis for the well-being of its people and for the enjoyment of their basic human rights. That was why the founders of the Indian Republic had endowed the country with all the relevant institutions to safeguard democracy - namely, an independent judiciary, a parliamentary form of government, a free press, and a commitment to the rule of law.

31. The institutions which India had fashioned to sustain it as a pluralistic, multi-ethnic, multi-religious, multi-linguistic and secular polity were designed to consolidate the country as a modern democracy. Apart from its political institutions, India had also taken measured steps to safeguard the well-being of its minorities and weaker sections of society through special institutions and legislation. However, pluralistic democracy did not function in a void. Its delicate balance was nurtured by respect for the rule of law. The dilemma that confronted many democracies today was the maintenance of that delicate balance in the face of terrorism, whose very aim was to destroy the rule of law through calculated violence against both the individual and the State.

32. India's commitment to democracy and a secular republic and its territorial integrity were being challenged by terrorist violence. The terrorism witnessed over the past few years in the Indian States of Jammu and Kashmir and Punjab was of an unparalleled ferocity. Jammu and Kashmir was an integral part of India, the ruler of that princely State having acceded to India unconditionally in 1947. The instrument of accession had been the same as those executed by other princely States. Thus the accession had had complete legal validity and was final and irrevocable. It had enjoyed the support of the people of Jammu and Kashmir and had been backed by the State's largest political party, the National Conference. The Constituent Assembly convened by the people of Jammu and Kashmir in 1951 and 1956 had set the seal on it by re-endorsing and reaffirming the accession of Jammu and Kashmir to India. The people of Jammu and Kashmir had returned freely elected

Governments to office several times and had enjoyed all human rights and fundamental freedoms. In all but one of the elections held in Jammu and Kashmir since the 1960s, voter turn-out had been between 55 and 57 per cent, well within the national average. Against that background, reference to the United Nations resolution calling for a plebiscite several decades previously had lost significance, particularly since the conditions for the holding of the plebiscite had never been fulfilled.

33. The difficulties that had arisen in the full and unhindered enjoyment of human rights in Kashmir were due to the instigation and abetment of ruthless terrorism and secessionism. In the past four years there had been as many as 14,542 incidents of terrorist violence in Jammu and Kashmir, entailing the death of about 2,700 innocent civilians, as well as countless acts of destruction of government and private property. Political leaders, workers and their relatives had been eliminated to prevent all democratic political activity; government officials had been killed to coerce the administration; members of the judiciary and the press had been intimidated to create a breakdown of the legal system and of independent journalism; intellectuals, educationists, journalists and community leaders had been abducted and killed to silence dissent. Systematic religion-based extremism by terrorist elements had resulted in the exodus of 250,000 members of other religious communities to other parts of India. The atrocities perpetrated by the terrorists had been wanton and indiscriminate, including systematic rape. Even organizations such as Asia Watch had confirmed grave violations of human rights by terrorists.

34. Many members of the Sub-Commission had spoken at length on the plague of terrorism and the dangers of misusing the concept of self-determination for partitioning countries on an ethnic or religious basis. Mr. Khalifa had cautioned Governments and NGOs not to lose sight of the coming horror and had spoken of the possibility of terrorist groups acquiring weapons of mass destruction. The march towards sophistication in that respect had already begun. In the four years up to 1992, in Jammu and Kashmir alone sophisticated arms and ammunition recovered from terrorist groups were enough to equip an entire division of a modern army.

35. Thus the predicament against which India struggled was the predicament of preserving democracy and preventing violations of human rights. However, despite the grave threat posed by certain disruptive forces to India's national unity and cohesion, the Government was anxious to avoid any departures from democratic norms. India's Constitution contained built-in safeguards in that respect, which were being strengthened. The Government had recently introduced legislation for the creation of a National Human Rights Commission with independent status and autonomous monitoring jurisdiction. Despite some 4,000 attacks on the security forces between 1990 and 1992 in Jammu and Kashmir, the security forces were under strict instructions to function with the utmost restraint in order to avoid civilian casualties and suffering. If it was established that force disproportionate to the situation had been used, officials were liable to be disciplined. In that connection, in Jammu and Kashmir 141 officers and men had been punished, including 45 who had been imprisoned.

36. Much had been made of the special legislation enacted to deal with terrorist offences. Such legislation existed in a number of States faced with problems of a far lesser magnitude. The Government of India did not claim that no human rights violations ever occurred. It did, however, claim that India as a country had a strong commitment to human rights and that its legal system had a remedial framework and a strong tradition of punishing human rights violations wherever they occurred. Accordingly, it had invited political leaders, legislators and journalists from different parts of the world to visit India, including Jammu and Kashmir, to judge for themselves, the timing of such visits being settled by consultations between the Government of India and the Governments of the States concerned.

37. At the World Conference on Human Rights in Vienna, 170 countries had condemned all acts, methods and practices of terrorism as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and the security of States and destabilizing legitimately constituted Governments. They had called upon the international community to take the necessary steps to enhance cooperation to prevent and combat terrorism. The Sub-Commission could give a lead in bringing the sustained pressure of world public opinion to bear on terrorism, which was a negation of democratic values and human rights.

38. Mr. MASRI (Observer for the Syrian Arab Republic) said that in recent days the world had witnessed the grave violations of human rights carried out by Israel in its aggression against Lebanon, which had added a new link to the chain of offences committed in the occupied territories. Indeed, Israel had broken all records in its killings of Palestinian, Lebanese and Syrian citizens. The World Conference on Human Rights had denounced systematic violations by foreign occupying forces and had called for standards to monitor the human rights performance of occupying Powers and for the legal protection of the local populations through compliance with international law, especially the Fourth Geneva Convention, which Israel had consistently refused to apply.

39. Resistance to occupation by any means was legitimate in international law, and it was a mistake to believe that it could be ended by force; in fact, the use of force would only strengthen it. Moreover, history showed that foreign occupations always came to an end. The return of lands to their rightful owners was the only path to peace.

40. Nevertheless, despite international condemnation, human rights were continuing to be violated by the occupying forces in the Israeli-occupied territories and in Bosnia and Herzegovina, and despite all the suffering of the peoples concerned the relevant resolutions adopted by the international community had not yet been implemented because of the application of a double standard in the approach to human rights, which were being used as an excuse to interfere in the domestic affairs of other States. The international community must therefore take immediate measures, in accordance with Chapter VII of the Charter of the United Nations, to end aggression and human rights violations so that peoples could live without fear in their homelands. Otherwise, all talk about human rights would be nothing more than empty words.

41. Mr. UL-HAKIM said that, while he was full of admiration for most NGOs, which were dedicated and did useful work for mankind in seeking out and reporting facts, the statements made by a few of them caused him to protest.

42. He did not represent the Government of Bangladesh, but he knew that to claim that one half of the Bangladeshi army was in the Chittagong Hill Tracts was a travesty of the truth. The reason for the trouble in the Chittagong Hill Tracts was Regulation No. 1 of 1900, which had been issued at a time when the total population of Bengal had been 45 to 50 million people and whose purpose had been to protect the relatively simple and honest people of the Chittagong Hill Tracts, who differed in religion and in other ways from their neighbours. Regulation No. 1 of 1990 had been abrogated when Bangladesh had become an independent State with its own Constitution, and the population of the Chittagong Hill Tracts had been put on the same level as other Bangladeshis. To reintroduce Regulation No. 1 would be to put the clock back and to deprive the inhabitants of the Chittagong Hill Tracts of the benefits of progress. The territory concerned accounted for 10 to 11 per cent of Bangladesh but had a population of less than 1 million out of the country's total population of 115 million. It was not possible to maintain that situation.

43. As Mr. Khalifa had pointed out, some non-governmental organizations had ulterior motives; it was a fact that multinational projects tended to follow where multinational business was already active. To the east lay the dangerous Karen area where poppy cultivation was developing and threatening to spread further into Bangladesh, India and elsewhere.

44. It was true, as Mr. Chernichenko had said, that human rights, in different degrees, were violated everywhere. The Universal Declaration of Human Rights had represented an ideal; its purpose had been to establish the sovereignty of man instead of that of the State. A balance must be struck between the two. Serious violations of human rights must be dealt with severely and the means for their eradication must be found.

45. He was concerned by reports that attempts were being made in the desert areas of Sudan to convert people forcibly to Islam. Such a practice must be condemned. No religion prescribed that it should be forced down the throat of others.

46. In some areas of the world the Mafia and the police were trying to deprive people of their human rights. The general trend nevertheless had been good for the individual in his struggle to achieve the sovereignty of man. The current period was one of transition and was therefore bound to be painful.

47. Mr. TIAN JIN said that paragraph 32 of the Vienna Declaration and Programme of Action reaffirmed the importance of ensuring universality, objectivity and non-selectivity when considering human rights issues. The standards laid down in international instruments should be implemented by all contracting parties at the same time as respect was ensured for the political, economic, social, cultural and religious and historical background of different countries or regions. Non-objectivity should be maintained.

Any accusations of human rights violations against countries needed to be as accurate and well founded as possible. Deliberate exaggeration was to be deplored and would inevitably lead to a loss of credibility.

48. Non-selectivity, as a term, was rejected by some influential people in the West. The reasons for that needed to be explored.

49. Countries that urged other States to respect human rights should first look at themselves and make sure that they could provide an example to others. Furthermore, countries should not turn a blind eye to human rights violations by their allies. Nor should they accuse other countries of human rights violations for political reasons or use human rights as a political tool. The Tibet region of China was a case in point. Some circles in the West did not want China to be a unified country and sought to divide it in the name of human rights. Such hypocrisy should be exposed. NGOs should also guard against using double standards.

50. Mr. SACHAR said that he had heard, with some pain, a statement in the Sub-Commission which suggested that racial discrimination and xenophobia were being exaggerated, and tried to confuse such phenomena with the problem of unjustified asylum-seekers in Europe. There had been a distortion of the genuine complaints of xenophobia against the United States of America, Europe and Australia which had been referred to in the report of the United Nations Secretary-General (E/CN.4/Sub.2/1992/11).

51. It went without saying that countries had every right to inquire into the authenticity of claims made by asylum-seekers. In fact, that was to be welcomed because Indian nationals had readily been granted asylum in other countries, which seemed wrongly to suggest that freedoms were restricted in India. But, it should not be forgotten that under article 14 of the Universal Declaration of Human Rights "Everyone has the right to seek and to enjoy in other countries asylum from persecution". The behaviour, in view of that, of the United States of America which had picked up people in international waters and sent them back to their country of origin without establishing if they were genuine asylum-seekers was totally unacceptable.

52. It was essential to consider the attitude and behaviour of the average citizens and authorities in countries where racial discrimination was practised. The report of the Secretary-General had drawn attention to the situation in a number of countries, including Belgium and had noted that increasingly serious cases of violence, discrimination and harassment were occurring in the form of systematic and abusive identity checks, attacks on Turkish and North African asylum-seekers and violence against them in the transit centre at Brussels airport.

53. It was often suggested that immigrants failed to integrate into their new society and therefore laid themselves open to racial discrimination. However, immigrants were subject to the same civil and criminal laws in the host country as the rest of the population; that suggested that they were integrated. It would be unfortunate if integration were to be seen as the need to dress, eat or believe in the same way as the rest of the population, thus rejecting the immigrants' right to their own cultural identity. That attitude was reminiscent of the colonial era and was to be deplored. It was

natural that ethnic groups should take pride in their language, customs and traditions - sentiments which in no way threatened their loyalty to their new State.

54. It was ironic that European and developed countries were trying to expand free trade in third world countries so that they could swamp their markets with their produce, and introduce their industries and technologies, but when it was a question of people from those countries coming to Europe and developed countries there were cries of invasion. An ILO Working Paper (No. 49) on Discrimination of Migrant Workers in Western Europe had looked at the situation of first and second generation migrant workers in Belgium, Germany and France and had found that discrimination in employment of migrant workers in Western Europe was pervasive and widespread. Every third person considered the presence of non-Europeans as a threat to his survival.

55. Mr. JOINET said that he wished to draw attention to the progress achieved in El Salvador; thanks to the United Nations Observer Mission in El Salvador; he also noted fewer cases of human rights violations and the attempts to overhaul the State apparatus. The process had been helped, of course, by the cooperation shown by the parties concerned and a certain political maturity. However, much remained to be done, especially in the area of constitutional reform and implementation of the recommendations of the Commission on the Truth. It was to be hoped that the neighbouring country of Guatemala would follow the same path as El Salvador. The Sub-Commission should give its new President every assistance and encourage a dialogue for peace.

56. With regard to Sri Lanka, the dialogue had broken down due to conflict which had led to an increasingly serious situation. Although most human rights violations were committed by the forces of repression, the serious violations perpetrated by guerrilla movements should not be overlooked. When the conflict had broken out once again in 1990, attacks on the Muslim minority which refused to join their cause were stepped up and paramilitary forces increased reprisals against Tamil civilians in the eastern part of Sri Lanka.

57. Turning to the situation in Tadjikistan he said that it was the most paradoxical of the Islamic Republics of the former USSR and the only one in which the Communist Party had survived intact. It was also the most strongly Islamic State of the Commonwealth of Independent States and the only one where a former leader of the official clergy had become an opposition leader and it was unique in so far as its opposition, which included Communist dissidents, nationalists and democrats, was dominated by an Islamic party. Following independence in February 1990, serious incidents had taken place between the opposition and the Communist Party. Riots had claimed increasing numbers of victims and when the opposition contested the elections, even more people had been hurt. Although the Government was facing problems in terms of maintaining order as well as of increased violations on the part of armed opposition groups, excesses were being carried out on a more frequent basis by the authorities themselves. Since the events of May 1992, many people, mostly unarmed civilians, had been summarily executed by law enforcement agents or had disappeared. It should be remembered that as a successor State to the former USSR, Tadjikistan was committed to respecting the standards of civil and political law. On 25 January 1993, members of a paramilitary group, the Popular Front had arrested 14 persons north of the capital. Three days later,

the bodies of 10 of them had been found, some of them bearing the hallmarks of torture. The remaining four had been reported missing. The situation had deteriorated further since the military were authorized to shoot on sight without warning. Such violations were being committed in an atmosphere resembling civil war, which had led to the death of thousands of people and the displacement of approximately one-fifth of the population in conditions reminiscent of some of the characteristics of ethnic cleansing.

58. With regard to the human rights situation in Kosovo, he said that, during the discussion on Bosnia and Herzegovina, it had been pointed out how potentially explosive the situation in Kosovo was and the threat it posed in terms of destabilizing the Balkans, hence the need for preventive measures. When he had been Special Rapporteur on the independence and impartiality of the judiciary, he had discovered cases of ethnic cleansing against magistrates and judges of Albanian origin. The replies provided by the Yugoslav authorities had not been convincing.

59. There was evidence that ethnic cleansing was in effect being carried out against the ethnic Albanians who accounted for almost 90 per cent of the population of Kosovo. The policy was being carried out against a backdrop of discriminatory legislation and brutal, sometimes sophisticated repression. Discriminatory legislation included an act of 26 July 1990 on employment relationships in exceptional circumstances. Approximately 100,000 ethnic Albanians had been dismissed, for the most part in posts in key sectors of the economy and it seemed that 23,000 Serbs and Montenegrins had been hired in their place. A further example was the act of 11 July 1990 which set up a fund to encourage development in Kosovo allowing Serbs and Montenegrins to obtain loans to move to Kosovo. Furthermore, a number of measures excluded ethnic Albanian students from universities and prohibited the use of Albanian language in other than private conversation. It seemed that the object of such legislation was to force ethnic Albanians to leave Kosovo and encourage Serbs and Montenegrins to move there with a view to changing the ethnic structure of the population. The situation seemed to indicate that ethnic cleansing and the population policy were part of one specific policy. In addition, a great deal of concordant and reliable evidence had been given that pointed to the fact that many ethnic Albanians were being subjected to violence such as searches and arbitrary detention often accompanied by maltreatment, even torture. Almost 30,000 ethnic Albanians had been arrested and imprisoned for periods of between 30 to 60 days. Three thousand two hundred persons had been sentenced to between 1 and 20 years in prison for having defended the cause of ethnic Albanians. The situation was alarming and a resolution should be passed in that regard.

60. The human rights situation in Chad was declining as a feeling of disappointment took hold. A commission set up by the Ministry of Justice had estimated that there had been some 40,000 victims of repression during the eight years of the Habré regime. When the new head of State, President Deby came to power, although he was a military man, it had been hoped that the nightmare had ended. There had been cause for optimism in that he had committed himself to the cause of democracy, and a more open Government had been sworn in in May 1992. In addition, a National Sovereign Conference had been set up to promote dialogue over violence, human rights associations had re-emerged, an independent press had been established and trade union

organizations had been created. However, at that point disappointment had set in. The Conference had been deferred, Joseph Behidi, Vice-President of the League of Human Rights in Chad had been assassinated, the press had been constantly threatened and in regions far from the capital, atrocities had been carried out, as in Ouaddaï, in tribal conflicts. Once a political police force had reappeared, and a sinister presidential guard had been re-formed, arbitrary arrests and detentions had reoccurred. The time had come to provide protection for persons fighting for human rights and for the Sub-Commission to show its concern at the situation.

61. He said that he was troubled to see that, as time went on, the status of NGOs was in danger of being undermined. Admittedly, they were often accused of exaggeration, but before any final verdict was taken it was essential to look at their track record. The Sub-Commission had many times questioned the information they provided and hoped that the reports on, for example Haiti, and the disappearances in Argentina had been exaggerated. He recalled the withdrawal by the Government of Argentina of one of its observers who had been indiscreet enough to state that the number of disappearances in his country had been exaggerated, thereby implicitly recognizing that disappearances were occurring. It was regrettable that a large majority of the reports submitted by NGOs ultimately were vindicated. For that reason, their claims should not be dismissed out of hand.

62. Mrs. KSENTINI said that the immense system of norms and institutions set up following the adoption of the Charter of the United Nations to protect human rights had not prevented widespread and frequent violations of those rights.

63. Figures supplied by the Centre for Human Rights to the 1993 World Conference on Human Rights gave an idea of the current situation. In the first three months of 1993, for instance, the Centre had received 125,000 complaints of human rights violations and reports of 5,004 disappearances. Well over one billion people had no access to health care, clean water or sanitation and largely as a result of that 14 million children died before reaching the age of 5 every year.

64. Such statistics raised the question of whether there were indeed more violations of human rights or whether there was simply a greater capacity for violations to be registered. Individuals and NGOs had been given access to mechanisms which defended human rights and in some cases were able to activate them. Individuals had been in a sort of exile within the community of nations but the role they had to play should be strengthened since it was an increasingly indispensable one.

65. National institutions too had an extremely important role and attempts to reinforce that role should be encouraged, since international organizations alone could not be relied upon. The people on the ground were in the best position to take responsibility for defending their own fundamental rights. NGOs had had various criticisms levelled at them and she agreed with some of the charges but wished to point out that, although there were rules to guide their contributions, they were far from clear.

66. The procedures themselves could be considered to be too numerous and varied and had been developed in such a way that there was a certain amount of duplication, and therefore the interests of victims were not always best served since it was not always clear which procedure should be used, which deadlines should be worked to and indeed which body should be addressed - even she herself after years spent working within the system occasionally found it confusing.

67. The various structures were not always equally effective. The procedures for protecting the human rights of women fell short of those available to all other bodies. It should be questioned whether there was a need to institute a specific procedure which would afford greater protection to victims if they fell outside the ordinary law system. In particular, communications to the Commission on the Status of Women were problematic, and there was no system under the Convention on the Elimination of All Forms of Discrimination against Women for individual petitions or complaints to be lodged. There were further problems connected with the co-existence of procedures, since communications between various institutions and even within the same institution were not always all they might be, and problems between the institutional and treaty systems and the regional and universal systems. The Sub-Commission should look at those issues in greater depth.

68. There was a question mark over the effectiveness of the procedures. Despite the existence of objective norms, violations still took place, for instance, the Palestinian people were still denied their right to self-determination, and the human rights situation in the occupied Arab territories, Lebanon and the former Yugoslavia were extremely worrying. The international community had been unable to assume a positive role, as was evidenced by the arms embargo on the former Yugoslavia which had denied the Bosnian Muslims their right to self-defence. The United Nations role in Somalia had reached a point of no return in a situation which was increasingly hard to handle while the tragedy of Angola had hardly evoked a reaction at all. Measures taken against Iraq had affected first and foremost innocent civilians.

69. Those examples highlighted the defects in the existing system. The international community reacted to events but it was often late and often directed by the Security Council with all the political implications that that entailed. Confronted with serious, large-scale human rights violations in various parts of the world, the international community had managed with difficulty to establish an international criminal tribunal. While the establishment of the tribunal to deal with the former Yugoslavia was to be welcomed, there was no hiding the fact that it was an ad hoc tribunal which would not be able to address other situations and since it was under the aegis of the Security Council the Permanent Members of that body would have the right to review and to veto the establishment of any future tribunal that might go against their interests.

70. It had been said that international action gained in objectivity when it was collective and collectively controlled. The depolarization of the world had not made the United Nations more collective and there was a growing danger that it might be hijacked by some of its States members through the Security Council.

71. As an expert body the Sub-Commission should look at ways and means of rationalizing the human rights protection procedures, study the criteria for taking action and review the role of various bodies and the relations between them. It should also look at ways of developing genuine cooperation, a partnership between States and the various elements of civil society. Furthermore, it should look for ways to go beyond condemnation and the mobilization of shame, which had been fruitful but limited, to the mobilization of solidarity in favour of the protection and promotion of all human rights in their universality and should ensure that in future the three key words would be human rights, democracy and development.

72. Mr. YONGUIAN JIN (Observer for the People's Republic of China) said that his delegation had listened attentively to the statements made on agenda item 6 and that in order to clarify some questions and clear up any misunderstandings he would acquaint the Sub-Commission with some basic facts about the Tibet Autonomous Region of China.

73. When Tibet had been liberated peacefully in 1951 its population had been about 1 million. The 1990 census however had shown that the population had more than doubled, since it then stood at 2.196 million, 2.096 million of whom were Tibetan. Life expectancy had risen from 35 years in the early 1950s to 64 years of age in 1993.

74. China was a big country with a population of nearly 1.2 billion. Controlling population growth and raising the quality of the population were basic policies of its Government. It had pursued a family planning policy from a sense of responsibility both towards the children of China and to mankind as a whole. A special policy had been instituted which took account of the populations and economic conditions of China's minority nationalities, so, although family planning had been carried out throughout China since the 1970s, it had not been carried out among the Tibetan people. Tibetan farmers and herdsmen were being taught scientific birth procedures and were not restricted as to the number of children in their families. Since 1970 both the birth rate and natural growth rate of the Tibetan population had been higher than the average rates for the country as a whole. Between 1982 and 1990 there had been an increase of 309,800 ethnic Tibetans in Tibet and the rate of natural population increase was 17.34 per thousand, 2.64 per thousand points higher than that of the national level in the same period. Such a high population growth had never before been recorded in Tibetan history.

75. For many centuries Tibetan Buddhism had had extensive influence in Tibet. Respect for and protection of freedom of religious belief was a basic policy of the Chinese Government and after the peaceful liberation of Tibet, protected by the Constitution and State laws, the Tibetan people had enjoyed fully the freedom to participate in normal religious activities. Sutra streamers and Mani stone mounds set up by devout believers could be seen everywhere in Tibet and inside and outside famous monasteries there were crowds of worshippers turning their prayer wheels or bowing to Buddhist statues.

76. There was no denying the fact that during the period of the "cultural revolution" (1966-1976) in Tibet, as in other parts of China, the policy on freedom of religious belief had been disrupted. There had been a national

upheaval, not directed exclusively at Tibet. Subsequently, the Chinese Government had redressed its errors and made considerable efforts to protect, promote and guarantee freedom of religious belief for all citizens. In the space of a decade, the Chinese Central Government had appropriated more than 200 million yuan in special funds for the Government of the Tibet Autonomous Region to renovate monasteries. The Government had also attempted to locate Buddhist statues that had been lost during the "cultural revolution" and distributed them to various monasteries and temples. There were currently more than 1,400 monasteries and other religious sites and over 34,000 monks and nuns in Tibet, which on the whole met the demands of religious believers for religious activities.

77. Tibet had a traditional culture with a long history and rich cultural heritage. The Chinese Central Government and the Government of the Tibet Autonomous Region attached great importance to protecting and developing Tibetan traditional culture. In 1987 the autonomous regional People's Congress had adopted the Regulations on Study, Use and Development of the Tibetan Language in the Tibet Autonomous Region, which clearly stipulated that both the Tibetan and Chinese languages should be used in the Region, with first place accorded to the Tibetan language. All official documents and notices were in both Tibetan and Chinese and the media also used both languages. Seventy per cent of books published were in Tibetan. The Tibetan language was the main subject of all schools at different levels. In recent years the traditional cultural heritage of Tibetans had been systematically collated. By the end of 1990 more than 1 million copies of 200 ancient Tibetan books had been distributed and Tibetan classics had for the first time been printed.

78. Education in the old Tibet had been very backward and over 90 per cent of the Tibetan population had been illiterate or semi-illiterate. Since 1951 the Chinese Government had attached great importance to education and had established over 1,400 schools at various levels. The school enrolment rate had increased from less than 2 per cent to 54 per cent. Many serfs and their descendants had become professors, architects, engineers and writers and had played an important role in Tibet.

79. With regard to the Chinese presence in Tibet, it should be stressed that the Han nationality people had never surpassed 5 per cent of the total population of Tibet. The Chinese Government had never adopted any policy of migration to Tibet. To meet the needs of construction, some Han experts and skilled workers had been sent there but most of them had returned to their homes after a period of service. Over the previous 10 years the Chinese Government had carried out a nation-wide programme of reform by implementing a policy of opening-up to the outside world. It was a policy that had been carried out in Tibet recently. It had promoted exchanges among different regions and accelerated economic development in all regions of the country, including Tibet and the policy was therefore welcomed by people all over China, including Tibetans. As a result of that policy some peddlers from neighbouring provinces had gone to Tibet on business. They belonged to a floating population and few would settle there.

80. The full enjoyment of political, civil and economic, social and cultural rights was the common goal of the international community. The Chinese Government had never considered itself to be perfect. It and all its people, including the Tibetan people, were developing the economy, introducing political reform and building up democracy and the rule of law and strengthening the enjoyment of all human rights. Those efforts were sincere and had been fruitful. The Tibet Autonomous Region, like all other parts of China, had made tremendous progress in all fields in the previous 40 years. It had enjoyed rapid economic development and the living standard of the overwhelming majority of Tibetan farmers and herdsmen had been greatly improved and they lived and worked in peace and contentment. In the field of human rights, the Tibet people enjoyed various human rights as did people of all other nationalities. Any person who was impartial, objective and without political bias could not but admit that the situation of human rights in Tibet in 1993 was a world apart from that prevailing in the old Tibet under the feudal system of serfdom.

81. Before concluding, he wished to point out that some Tibetan separatists, with the support of certain foreign anti-China forces, had over the previous years been producing and spreading various absurd lies about the Chinese attitude to human rights in Tibet. The motivation behind their invention of the so-called question of human rights in Tibet was to deceive the international community and to slander the Chinese Government so as to achieve the aim of separating Tibet from China by jeopardizing the national unity and territorial integrity of China. It was an attempt that was doomed to failure.

82. Mr. JOINET wished to clarify that when he had talked about disappearances in Argentina earlier in the meeting he had meant disappearances that had occurred under the military junta before the transition to democracy. He also wished to point out that in his statement he had also referred to his country's unfortunate behaviour in the case of Chad.

83. Daw YIN YIN MYINT (Observer for Myanmar), making a statement equivalent to a right of reply, said that allegations made with regard to the authorities of her country under agenda item 6 were mere fabrications.

84. The Union of Myanmar was made up of over 130 national racial groups which could be grouped into 8 major national races. All the national races had lived together through peace and war and her Government believed that the strength of the country lay in its many peoples. With a view to alleviating the poverty and improving the social and economic conditions of the national races in border areas, her Government had been carrying out development programmes since May 1989. Already nine insurgent groups had returned to the legal fold and were cooperating with the Government in developing their own areas. The allegations made by certain parties were grotesque and mendacious.

85. It was pertinent to point out that certain elements had made an attempt to denigrate the authorities of Myanmar. They were armed terrorists ravaging the countryside and the local civilian populace. They did not represent in any way their own national racial group. Her delegation considered that the presence of such elements in the Sub-Commission would in no way contribute towards its work.

86. Mr. ELMUFTI (Observer for Sudan), making a statement equivalent to a right of reply, said that his Government wished to respond to the statement made by Mrs. Chavez on the previous day at the 15th meeting. Although his delegation wished to thank her for the concern she had shown for human rights in Sudan, a matter that also enjoyed a high priority on his Government's agenda, it wished to point out that her statement had contained a number of ironies.

87. First was her indifference to the violations of human rights in the United States of America of more than 40 million Africans which had been referred to by an NGO at the same meeting. Instead of addressing those violations she had opted to question the NGOs for not having pointed to the human rights record of the Government of Sudan and had even attempted to find justifications for the NGOs not having done so. His delegation believed that was unprecedented since those NGOs had always shown an interest in human rights and if there were obvious human rights violations taking place in Sudan they would not have waited for an expert to urge them to address them.

88. Second was the admission by Mrs. Chavez that she had relied solely on an interview by one American television station instead of on the massive and factual reports prepared by different reliable sources such as the special envoys of the Secretary-General, and so on.

89. Third was the fact that Mrs. Chavez had singled out Sudan in such a dramatic way despite the fact that her evidence was uncorroborated, a practice condemned in the Vienna Declaration and Programme of Action, which called for objectivity and non-selectivity.

90. Even if those matters were disregarded, the relevant rules obliged experts to transmit such allegations to the Special Rapporteur appointed by the Commission on Human Rights who would then verify them instead of pressuring the Sub-Commission to take a stand against his Government, which was considered by law to be innocent until proven guilty.

91. In that regard his delegation would also like to note that the United States Government had played a leading role in appointing the Special Rapporteur for the Sudan during the forty-ninth session of the Commission on Human Rights. Nevertheless the American expert was too impatient to wait for the Special Rapporteur to visit Sudan and verify the allegations and preferred instead to take a stand against Sudan on the basis of unfounded allegations. However, his delegation did not want to conclude that the expert was echoing the position of the United States Government which preferred to take advantage of the Sub-Commission session rather than await a report which might be advantageous to the Government of Sudan.

92. As for the so-called "lost children" mentioned in Mrs. Chavez' statement the reports of the various United Nations agencies which had dealt with the problem showed that the rebel movement in Sudan had detained the children to use them as a human reserve for their armed forces. His Government had consistently made every effort to cooperate with those agencies to unite the children with their families but their efforts had been met with difficulties because of the rebels' insistence in keeping the children against their will. His Government was certain, however, that those children would avail

themselves of any opportunity to escape to government-controlled areas. A group of the children had already managed to escape and had been flown to Khartoum on 4 August 1993 and were now available for interview.

93. It was to be hoped that Mrs. Chavez would concentrate on ascertaining the facts rather than relying on a biased interview that had no factual base. Furthermore, if the Government of Sudan was a religious extremist Government, as she had alleged, it would not have exempted southern Sudan from the application of Islamic laws despite the fact that there were more Muslims than Christians in the south. In addition, if the armed conflict in southern Sudan was a religious conflict it would not have started 25 years before the application of Islamic law.

94. In conclusion, his delegation would like to assure the Sub-Commission that despite those unjustified statements and allegations, his Government would continue to cooperate with the Sub-Commission and with all United Nations bodies entrusted with human rights issues.

95. Mr. BENHIMA (Observer for Morocco) said that some NGOs, on the pretext of the defence of human rights, had raised the question of Western Sahara in their statements in order to defend the cause of the Frente Popular para la Liberación de Saguia et Hamra y Río de Oro (by falsifying events noted in various reports since 1990 by the Secretary-General of the United Nations, the most recent of which had been published on 28 July 1993 (S/26585).

96. In a deliberate attempt to mislead public opinion, those NGOs accused Morocco of impeding the organization of the referendum. However, none of the Secretary-General's reports had accused Morocco of doing so. On the contrary, the most recent report had reflected Morocco's reaffirmation of its commitment to implementing the peace plan in its entirety and its determination to ensure that the referendum was held as soon as possible.

97. Despite its legitimate concerns, Morocco had accepted the compromise on the interpretation and implementation of the criteria of admissibility for voting proposed by the Special Representative of the Secretary-General whereas the Frente POLISARIO, according to the Secretary-General's report, had asked for amendments to be made to the text, thereby hoping to slow down the ongoing process. The NGOs should be reminded, since they seemed to have a short memory, that for many years the Frente POLISARIO had maintained that the census carried out by Spain was seriously flawed and that the population was almost 1 million. It was hardly surprising that it was now defending a fall-back position.

98. It was clear that the leaders of the republic of mirages were reacting with the reflexes of a dying body since some of their number, formerly influential members of the Frente POLISARIO, had returned to Morocco, thus showing that they were Moroccan, as was the Sahara.

99. It was indecent that those NGOs who arrogated to themselves the right to defend the Saharan people said nothing about the flagrant human rights violations in the Frente POLISARIO camps, which had been the subject of an

Amnesty International report published in April 1993. The same NGOs kept quiet about the repression which had followed the uprising in those camps in October 1988.

100. Those NGOs spoke of disappearances, citing unbelievable figures and indeed some of the disappearances were even recorded as having happened at a time when the territory was still under Spanish administration. The names provided were transcribed in various ways, artificially expanding the list of those supposed to have disappeared. The Working Group on Enforced or Involuntary Disappearances had picked up on the fraud.

101. He wondered what could be done to prevent the International League for the Rights and Liberation of Peoples from making itself ridiculous as it had done when its representative had denounced the burden of taxation on the Saharan people to the Commission on Human Rights in 1987 whereas everyone knew that the Saharan provinces of Morocco were exempt from taxation.

102. His delegation was aware of the links between the Frente POLISARIO and Centre Europe - Tiers Monde (CETIM) and therefore felt under no obligation to respond to CETIM's allegations. In that case indifference was the best form of contempt. However, his delegation would request it to check in future the information it put about and to refrain from trotting out the same old cliches which no one wanted to hear.

103. Those NGOs failed to adopt a proper and business like approach and he shared entirely the opinion of Mr. Khalifa who had said that the world needed human rights organizations that did not get carried away or judged harshly and lightly. Many Sub-Commission experts had also endorsed that view on many occasions.

104. In any case, the intimidation resorted to by certain NGOs did not alarm his delegation unduly.

The meeting rose at 1 p.m.